No. 90-1916

Supreme Court, U.S.
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In The Supreme Court Of The United States

OCTOBER TERM, 1990

JAMES E. DEAN,

Petitioner,

v.

JOAN H. DEAN,

Respondent.

ON CERTIORARI TO THE
SUPREME COURT OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I WHETHER THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE PROHIBITS A STATE FROM DENYING, SOLELY BECAUSE OF AN INABILITY TO PAY SUPPORT, ACCESS TO ITS COURTS TO A SPOUSE WHO, IN GOOD FAITH, SEEKS A REDUCTION IN CHILD AND SPOUSAL SUPPORT DUE TO HIS FINANCIAL INABILITY TO PAY?

II WHETHER THE FOURTEENTH AMENDMENT'S EQUAL PROTECTION CLAUSE PROHIBITS A STATE FROM DENYING, SOLELY BECAUSE OF AN INABILITY TO PAY SUPPORT, ACCESS TO ITS COURTS TO A SPOUSE WHO, IN GOOD FAITH, SEEKS A REDUCTION IN CHILD AND SPOUSAL SUPPORT DUE TO HIS FINANCIAL INABILITY TO PAY?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Mr. James Dean and Mrs. Joan Dean.

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OPINION BELOW

The opinions of the Chesterfield County Circuit Court, the Virginia Court of Appeals and The Supreme Court of Virginia appear in the Appendix hereto.

GROUNDS FOR JURISDICTION

The judgment of the Supreme Court of Virginia was entered on March 14, 1991. This petition for certiorari was filed within 90 days of that date. This court's jurisdiction is invoked under Article III, Section I of the United States Constitution. 28 U.S.C.A. Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV

Section 1 ... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of

the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

Va. Code Ann. Sec. 20-108 and Va. Code Ann. Sec. 20-109.

STATEMENT OF THE CASE

On September 22, 1986 Mr. Dean's wife filed for a divorce in the Circuit Court of Chesterfield, Virginia. At this time Mr. Dean had just lost his job and was receiving $718.00 a month in unemployment benefits.

On November 21, 1986, the Court awarded Joan Dean $700.00 in spousal and child support pendente lite leaving James

Dean with a mere $18.00 a month to live on. On March 26, 1987 the support order was increased from $700.00 a month to $1,400.00 a month beginning April 1, 1987. Mr. Dean had obtained employment just before that date but was already well in arrears in his payments.

Due to Mr. Dean's financial troubles he was unable to make the support payments and on May 18, 1987 he filed a motion for the reduction of the $1,400.00 per month support award. On this same date, the Court heard Joan Dean's motion to have Mr. Dean held in contempt for his failure to pay support. The Court ordered Mr. Dean to pay $2,200.00 in arrears by May 28, 1987 or be found in contempt. His motion for reduction was not heard because he was in arrears at

the time and under the Virginia law complained of reductions cannot be considered until all arrears in support are eradicated. On July 21, 1987 the Court held Mr. Dean in contempt for his failure to pay support and a capias was issued for his arrest.

A final decree of divorce was entered on September 28, 1987 and the Court incorporated the previous support orders and continued to find Mr. Dean in contempt.

On October 9, 1987, an equitable distribution hearing was held and Joan Dean was awarded 70% of the marital assets. The Chesterfield Court appointed Mrs. Dean's attorney special commissioner and on January 26, 1988, he filed the commissioner's report which found the

arrears was sufficient to take the balance of the marital estate so Joan Dean received 100% of the real estate.

The arrears became insurmountable and still continue to mount, they exceed $70,000.00 today. Dean's wages have been garnished in an attempt to satisfy these arrears. The capias is still outstanding and serves to make Dean a fugitive in Virginia thus prohibiting him from attending the various hearings and barring all visitation with his children.

On June 30, 1989, James E. Dean petitioned the Circuit Court to determine his visitation rights, to reduce child support and to set aside, vacate and modify previous orders of the circuit court.

The circuit court denied Mr. Dean's

petition to reduce child and spousal support and denied him the opportunity to be heard while he is still in noncompliance with the previous court orders. Under Virginia law when a person who is in contempt of an order of a court for having failed to make support payments files a petition to have those support payments reduced, a court should refuse to proceed further until the appellant has purged himself of contempt by paying the arrears past due. Gloth v. Gloth, 154 Va. 511, 554-55, 153 S.E. 879, 893 (1930). Mr. Dean appealed this decision denying the relief sought.

James E. Dean appealed to the Court of Appeals of Virginia which entered a memorandum opinion on December 11, 1991 which is now a part of the record of the

case. In that opinion the Court of Appeals sustained certain portions of the trial court's opinion and reversed others.

Mr. Dean then filed a Petition for Appeal with the Supreme Court of Virginia which was denied on March 14, 1991.

REASONS FOR GRANTING THE WRIT

I. DUE PROCESS OF THE LAW

Virginia's statute, at least as interpreted by Gloth, requires the payment of all arrears as a condition precedent to obtaining court relief, it is unconstitutional as applied to those spouses who are unable to comply through no fault of their own. When a state law regulating divorce comes into conflict with the Fourteenth Amendment, it is the duty of the federal courts to resolve

that conflict in favor of the constitution. Geisinger v. Voss, 352 F.Supp. 1045,109 (1971); citing Boddie v. Conn., 401 U.S. 371 (1971) and Wymelenberg v. Syman, 328 F.Supp 1353 (E.D. Wis. 1971). Due process prohibits a state from denying, solely because of an inability to pay, access to its court to individuals who are seeking relief. Resort to the state court is the only means available for modification of the support orders thus defendants such as Dean are faced with exclusion from the only forum effectively empowered to adjudicate the problem. Since a judicial proceeding is the only effective means of resolving the dispute at hand, a denial of the defendant's full access to that process raises grave questions as to the

constitutionality of such a denial of due process. See Boddie v. Conn., 401 U.S. at 376. There is no recognized, effective alternative for the modification of a support decree since only the court may modify, vacate or set aside a support agreement. Like Boddie. the judicial process is not only the"paramount dispute-settlement technique, but, in fact, the only available one." 401 U.S. at 377. Thus this appeal can only "properly be resolved in light of principles enunciated in our due process decisions that delimit rights of a defendant compelled to litigate their differences in the judicial forum." Id. Thus "...due process requires, at a minimum, that absent a countervailing state

interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Id.

The right of access to the courts is a constitutional right protected by the Due Process Clauses of the 5th and 14th Amendments which assure that no person will be denied an opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. 160 CJS Constitutional Law Section 1141. Due process dictates that all parties should be given the opportunity to be heard which includes a reasonable right of access to the courts in order to petition the court for a redress of any

grievances. By denying Mr. Dean's constitutional right to be heard on his petition, the Virginia statute violates these due process rights, by denying Mr. Dean the right to redress his grievances by closing the courthouse door to this litigant. In Merrick v. Merrick, 441 F.Supp. 143 (1977) the court held that the door to the courthouse should not be closed to litigants asserting constitutional claims, nor should they be deterred by the threat of the assessment of counsel fees.

The right of access to the courts in order to redress one's grievances is a fundamental and substantive right protected by the 14th Amendment's Due Process Clause. Boddie v Conn., supra. When substantive due process rights under

the 14th Amendment are denied by a state, the state's actions or law is subjected to the standard of strict scrutiny. Under the strict scrutiny standard the state must show a compelling public purpose, Roe v. Wade, 410 U.S. 113 (1973), and that the state has used the least burdensome means to achieve its purpose, Doe v. Bolton, 410 U.S. 179 (1973). A state law, which denies access to its courts and thereby excludes the defendant from the only forum available for the resolution of his particular dispute, should be reviewed under the strict scrutiny standard and unless a compelling state interest exist for such a denial of both substantive and procedural due process the state law should be declared unconstitutional.

Furthermore, the petitioner's interest affected by the Virginia statute is substantial in that it denies the indigent petitioner access to the court - the only available means to seek a reduction in support awards. The Virginia statute creates a substantial risk of an erroneous and unconstitutional deprivation of the petitioner's right and interest in obtaining access to the courts in order to resolve his dispute. The government's interest in trying to enforce the payment of its support awards is outweighed by the petitioner's constitutional right to petition the court for a redress of his grievances. See Matthews v. Eldridge, 424 U.S. 319 (1976).

The due process clause also

guarantees an individual the right to be to be granted the opportunity to be heard at a meaningful time and in a meaningful manner. Boddie v. Conn., citing Armstrong v. Manzo, 380 U.S. 545 (1965). This right to a "meaningful opportunity to be heard...must be protected against denial by particular laws that operate to jeopardize this right for particular individuals." Boddie v. Conn., 401 U. S. at 379-80.

Virginia state law denies a party his fundamental right of due process, substantive as well as procedural due process, by denying an indigent party his right of access to the courts. Other states have held that the courts should not require a husband to pay the arrears as a condition precedent to granting a

reduction in support where arrears have accumulated because the husband was unable to comply with the original support decree. Commonwealth v. Brown, 28 PA 180 (1903); Ramhorst v. Ramhorst, 138 NJ 523, 48 A2d 834 (1946); MacDonald v. Superior Court, 40 Cal. App.2d 517, 104 P2d 1071 (1940). The fact that a party is in arrears should not prevent the court from hearing his petition for a reduction in support. 6 ALR2d Alimony Sec. 6 (149). The better rule of law is that the courts can consider and grant a reduction on the grounds of changed financial conditions despite arrears. See Hulcher v. Hulcher, 177 Va. 12, 12 S.E.2d 767 (1941) and 6 ALR2d Alim. Sec 3.

This Virginia law cannot be

permitted to penalize a party whose unfortunate lose of his job renders him unable to financially comply with an original support decree which is obviously burdensome and unreasonable. This law does so penalize Mr. Dean. It denies him access to court, the only place where he can address the problem. Where economic circumstances clearly indicate that a party cannot pay the amount the court set, and that such sum is inequitable, and either party ought to be able to appear in court to obtain relief. Hawkins v. Hawkins, 187 Va. 595, 475 SE2d 436 (1948).

Furthermore, the effect of Virginia's law is to deny the husband, Mr. Dean, his constitutionally protected right of visitation with his children by

subjecting him to arrest for contempt of the court's orders, if he should return to Virginia to attempt to see his children.

Additionally, this contempt order prevents Mr. Dean from being able to appear in any Virginia Court to contest or petition the support payments. As a result his wages are being garnished in the State of Florida thus the Virginia Courts continue to act in violation of Mr. Dean's right to procedural due process. The government cannot garnish the wages of an alleged debtor without granting that individual the right to a hearing to determine whether there is a legitimate basis for such garnishment. Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

II. EQUAL PROTECTION OF THE LAW

Mr. Dean contends that the Virginia Statute, which denies him the right to a hearing and access to the court to rectify an unreasonable support decree due to his financial inability to comply with that very decree, also violates the equal protection clause of the 14th Amendment. Individuals deprived of important rights by discriminating state action can claim equal protection under the 14th Amendment. Hamrick v Boles, 231 F.Supp. 507 (N.D.W.Va. 1969). Like the defendant in Boddie, Mr. Dean is the victim of the "invidious discrimination [which] is based on one of the guidelines: poverty." Boddie v. Conn, 40 U.S. at 386 (J. Douglas, concurring opinion). "Lines drawn on the basis of

wealth or property, like those of race (Korematsu v. U.S., 323 U. S. 214, 216), are traditionally disfavored." Harper v. Virginia Bd. of Elections, 383 U.S. 663, 668 (1965)(electoral fee requirement). Thus "the requirement of fee paying causes an `invidious' discrimination (Skinner v. Oklahoma, 316 U.S. 535, 541) that runs afoul of the Equal Protection Clause." Id.; See also: Douglas v. Cal., 372 U. S. 353, 355 (1962); Long v. District Court of Iowa, 385 U.S. 192, 194 (1966).

According to Meltzer Et Al v. C. Buck LeCraw & Co., 402 U.S. 954, 961 (1970), poverty may be considered a suspect legislative classification. Therefore the state statute may be subject to the standard of strict

scrutiny which means the state must show that it has a compelling state interest in requiring the payment of all arrears as a precondition to granting a hearing for the reduction of a support award and that this statute's requirements are the least onerous means to achieve the state's purpose in requiring this precondition to the granting of a hearing to reduce support awards.

The Virginia statute unjustifiably discriminates against the indigent party by closing the courts to an individual on the grounds of an inability to pay a sum certain as a precondition to obtaining access to the courts and the judicial system. The statute involves invidious discrimination in that it denies a hearing only to those who are indigent -

those who are too poor to comply with the support payments and thus fall behind. This differentiation in treatment of those seeking a reduction or modification in their support orders thereby violates the Equal Protection Clause of the 14th Amendment. "Where money determined not merely `the kind of trial a man gets' but whether he gets into court at all, the great principle of equal protection becomes a mockery." Boddie v. Conn., 401 U.S. at 389, citing Griffin v. Illinois, supra, at 19.

'Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights when based upon the financial situation of the defendant are repugnant to the

constitution. Boddie v. Conn. , 401 U.S. at 371, citing Roberts v. La Vallee, 389 U. S. 40,42 (1967); Williams v Oklahoma City, 395 U.S. 458 (1969); Long v. District Court of Iowa, 385 U.S. 192 (1966); and Draper v. Washington, 372 U. S. 487 (1963). "There can be no equal justice where the kind of a trial a man gets depends on the amount of money he has." Id., citing Griffin v. Illinois, 351 U. S. 12, 19 (1955). The state's interest in imposing this financial requirement of full payment of arrears as a condition precedent to obtaining a hearing is outweighed by the more important interest of the individual's constitutional right to be granted a hearing as required by the Constitution's Due Process and Equal Protection Clauses.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to Rule 29.3 of the Supreme Court Rules, that I have on this 12th day of June, 1991, mailed, with first class postage prepaid, three copies of the foregoing Writ of Certiorari to William D. Hamner, Esq. who is the only party required to be served.

William G. Shields.

APPENDIX

VIRGINIA

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON THURSDAY THE 14TH DAY OF MARCH, 1991.

JAMES E. DEAN, Appellant,

against Record No. 910047
Court of Appeals No. 1116-89-2

JOAN H. DEAN,

From the Court of Appeals of Virginia

Finding that the decision of the Court of Appeals does not involve a substantial constitutional question as a determinative issue or matter of significant precedential value, the Court dismisses the petition for appeal filed in the above-styled case. Code § 17-116.07 (A)(3) and (B).

For the Court,
David B. _____
Clerk

Filed,
Virginia Supreme Court
VIRGINIA

IN THE COURT OF APPEALS OF VIRGINIA ON TUESDAY THE 11TH DAY OF DECEMBER, 1990.

JAMES E. DEAN, Appellant,

against Record No. 1116-89-2
Circuit Court No.
CH-5117-86

JOAN H. DEAN, Appellee.

Upon an appeal of right from a judgment rendered by the Circuit Court of Chesterfield County.

Before Judges Barrow, Benton and Coleman

For reasons stated in writing and filed with the record, the judgment appealed from is affirmed in part and reversed in part and the case is remanded to the trial court for further proceedings in accordance with the views expressed in writting opinion of this Court.

This order shall be certified to the trial court.

For the Court,
Patricia G. Davis
Clerk

COURT OF APPEALS OF VIRGINIA

Panel: Judges Barrow, Benton and Coleman
Argued at Richmond, Virginia
UNPUBLISHED OPINION

JAMES E. DEAN, Appellant,

v. Record No. 1116-89-2

MEMORANDUM OPINION BY JUDGE SAM W. COLEMAN III
DECEMBER 11, 1991

JOAN H. DEAN

William G. Shields (Anderson, Parkerson & Shields, on brief), for appellant.

William D. Hamner (Lane & Hamner, P.C., on brief), for appellee.

James E. Dean filed a petition on June 30, 1989, in a divorce proceeding in the Circuit Court of Chesterfield County requesting that the court set aside, vacate, and modify retroactively the child and spousal support orders and the equitable distribution award. He also petitioned the court to reduce the amount

of child and spousal support he must pay based on a change in his financial condition and to modify the conditions of child visitation to require that the children be brought to visit him outside Virginia.

By order entered December 22, 1989, the trial court ruled that the child and spousal support orders which had been entered on September 28, 1987, and the equitable distribution award of October 9, 1987, and the partition order of April 5, 1988, which was ancillary to the equitable distribution award, were final unappealable orders and that the court lacked jurisdiction to grant the relief which he had requested. As to the petition to modify support based on a change in condition and to modify child

visitation rights, the trial court dismissed the petition to modify child and spousal support and denied the request to modify the conditions of visitation. We affirm the rulings of the trial court, except for the dismissal of the petition to modify support. The petition to modify support will be reinstated upon the docket until such time as James E. Dean has made a reasonable effort to purge himself of contempt of has demonstrated to the trial court that his nonpayment of support is not contemptuous.

The trial court correctly held that the spousal and child support orders and the equitable distribution award and partition decree were final, appealable orders, Rule 1:1, for which Mr. Dean had

failed to note an appeal within thirty days of entry of the orders as required by Rule 5A:6(a). Therefore, the trial court had no authority to grant the relief requested to vacate or modify these orders. Mr. Dean's claim that the orders were not final because they provided that the court would retain the matters on the docket "for further proceedings as necessary" has no merit. As the Supreme Court said in Blair v. Rorer's Adm'r, 135 Va. 1, 116 S.E. 767, error denied, 262 U.S. 734 (1923), "If the decree were in fact in all other respects a final decree, the addition of the words 'this cause is continued' would not affect its finality," as the "continuance was doubtless for the conclusion of some [other] matter 'beyond

the cause.'" Id. at 16, 116 S.E. at 773. The record reveals that the matters were retained as a measure "necessary for the execution of the decree" which the Court in Blair indicated was a "matter beyond the cause." Id.

The only issue properly before this Court is whether the trial court was correct in refusing to hear Mr. Dean's petition to reduce child and spousal support because he was in contempt of the previous support orders and had made no effort to purge himself of the contempt. The trial court consistently had ruled that it would consider the petition to modify support based on a change of condition only when Mr. Dean had demonstrated that his failure to make payments was not contemptuous or that he

had purged himself of the contempt. Mr. Dean had the opportunity to demonstrate the he was not in contempt or had purged his contempt but failed to make the necessary showing. Accordingly, the trial court did not abuse its discretion in refusing to hear the petition until he absolved himself of the contempt.

The rule is well-settled in Virginia that when a person who is in contempt of an order of a court for having failed to make support payments files a bill to have those support payments reduced, a court may in its discretion "refuse to proceed further...until [he] has purged himself of his contempt." Gloth v. Gloth, 154 Va. 511, 554-55, 153 S.E. 879, 893 (1930); see also, Hulcher v. Hulcher, 177 Va. 12, 19, 12 S.E.2d 767, 769-70

(1941); Davis v. Davis, 206 Va. 381, 387, 143 S.E.2d 835, 839 (1965). The record reveals the following: (1) that Mr. Dean first became delinquent in his support payments in early 1987; (2) that around that time he moved to Florida, obtained employment as an engineer, and then failed to make an appearance, either in person or through counsel, at most of the proceedings in this case; (3) that the trial court found him in contempt for failing to pay his support obligation as early as July 21, 1987, and that a capias was issued for his arrest on September 28, 1987; (4) that subsequently until May 1988 he made sporadic partial payments of $500; and (5) that from May 1988 until June 30, 1989, the date of his petition, he had made no support payments except

for the amount garnished from his wages, which did not satisfy the periodic support obligations. The trial judge had these facts before him when he stated that had Mr. Dean shown "in any way the willingness or the opportunity to begin to purge himself," he would have granted him the chance to be heard.

The trial court, prior to entry of its December 20, 1989, order, had refused to hear Mr. Dean's support reduction petition until he had purged his contempt. However, apparently in order to assure that the parties would have a final appealable order, the trial court dismissed the support reduction petition in its December 22, 1989, order. We hold that the petition, the filing date of which controls the time from which the

court would be empowered to grant relief, should not have been dismissed; instead, the matter should have been retained on the docket, consistent with the trial court's prior rulings refusing to hearing the motion, for such reasonable time as deemed appropriate for Mr. Dean to absolve himself of contempt. Gloth, 154 Va. at 554-55, 153 S.E. at 893. Accordingly, we order that the petition to reduce child and spousal support based on an alleged change of condition be reinstated upon the trial court's docket, effective as of its filing on June 30, 1989. Accordingly, we affirm the refusal of the trial court to entertain the petition until James E. Dean has purged himself of contempt by making a reasonable effort at compliance or by

proving to the trial court that his nonpayment of his support obligation was not contemptuous.

Affirmed in part; reversed in part and remanded.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

JOAN H. DEAN, Plaintiff,

v. Chancery No. 5117-86

JAMES E. DEAN, Defendant.

ORDER

This day came the parties, upon four issues raised by the defendant. The defendant appeared by counsel and the plaintiff appeared in person and by counsel.

The first motion by the defendant is for a reduction in child support or in the alternative termination of child support upon the grounds that he had lost his job in November and had no income from which to make these support payments. The Court denied the motion,

Mr. Dean has not made a good faith effort to reduce the arrearage and therefore, the Court will not hear the matter as the defendant does not have the standing to raise this issue.

The second motion by the defendant is to compel plaintiff to answer discovery, the Court ruled that since the defendant is not abiding by the Court ordered child support and orders to reduce arrearages, then he is not entitled to have his discovery answered and in addition the evidence sought is not relevant to any issue that is properly before the Court.

Defendant proferred to the Court a Request for Admission filed upon plaintiff April 13, 1990 and unanswered by the plaintiff within the thirty (30)

day period permitted by the Rules and indeed unanswered by the plaintiff at any time, a copy of that Request for Admission is attached hereto. The Court did not consider this evidence for the same reasons and it denied defendant's motion to compel discovery on the grounds that the defendant is in contempt and has no standing to insist that the plaintiff respond to such a Request.

The third motion made orally by the defendant is that since at least November of 1989 the Florida Support Enforcement Agency has been withdrawing 30% of the defendant's income or unemployment benefits each pay period and that the defendant should be given credit on the arrearages for the same. The plaintiff objected on the grounds that she had not

received any such money although she had been shown records that the money is being taken from the defendant's pay. The Court will not consider this matter.

The fourth motion by the defendant is a motion for contempt against the plaintiff on the grounds that the plaintiff had breached her March 16, 1990 agreement to permit the defendant to call his children. Plaintiff objected because no order had been entered previous to that effect. The Court hereby orders that the defendant may attempt to make this call between 6:00 p.m. and 7:30 p.m. on any night of the week. The defendant moved to have the Court identify a specific day of the week upon which the children would be available to be reached by phone this way, which motion the Court

refused.

To all of the above, except the granting of some opportunity for the defendant to call his children, the defendant objected.

ENTER: 7/3/90

John F. Daffron, Jr.
Judge

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

JOAN H. DEAN, Plaintiff,

v. Chancery No. 5117-86

JAMES E. DEAN, Defendant.

DECREE

THIS CAUSE, which has been regularly matured, docketed, and set for hearing, came on this 20th day of January, 1988, to be heard upon the Petition for Partition of plaintiff, upon proof of service on and proper and legal notice to the defendant and his counsel, and upon the Answer of the defendant, by counsel; and the failure of the defendant or his counsel to appear at this hearing; and was argued by plaintiff's counsel.

UPON CONSIDERATION WHEREOF, the

Court doth ORDER, ADJUDGE, and DECREE that this cause be and it is hereby referred to **WILLIAM D. HAMNER, ESQ.**, as **SPECIAL COMMISSIONER** of this Court, who shall investigate and report to this Court, in writing, without the necessity of sending any notice to the parties and conducting a formal hearing, as soon as practicable, as follows:

1. Whether the facts and statements in the Plaintiff's Petition to Partition are true;

2. Who are the owners of the real estate described in said Petition;

3. An account of all delinquent taxes, if any, on said real estate and all liens of record if any, binding on said real estate, their amounts, the identity of the lien holder, and the

order of their priority.

4. What is the fair market value of the fee simple and annual rental value of said real estate and the improvements thereon, thereby estimating a fair market value of the land and the improvements thereon, separately.

5. Whether the rents and profits from said real estate for five (5) years shall be sufficient to satify the liens against the real estate;

6. Whether the property is susceptible of partition in kind amoung the parties entitled thereto; and if not,

7. Whether any of the owners is willing to take the whole property and pay the other owners such sums of monery (sic) as their respective interests may entitle them to; and if not;

8. Whether the interest of those entitled to said real estate or its proceeds will be promoted by a sale of said real estate and division of the proceeds; and if so,

9. Whether the proper parties are before the Court in this cause to enable the Court to effect partition and/or sale; and

10. Any and all other matters deemed pertinent by said Special Commissioner and such matters concerning which he is required to report by any party in interest, if the same be pertinent to the issues in this cause.

And this Special Commissioner shall make his written report to the Court in execution of this Decree, with a copy to be sent to defendant's counsel of record,

and any objections thereto shall be filed with this Court within ten (10) days of the date said Special Commissioner's report is filed with the Court. And the Clerk of this Court is directed to send a copy of this Decree to all counsel of record herein.

Enter: 1/20/88

John F. Daffron, Jr.
Judge

Seen: William D. Hamner, p.q.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

JOAN H. DEAN, Plaintiff,

v. Chancery No. 5117-86

JAMES E. DEAN, Defendant.

ORDER OF EQUITABLE DISTRIBUTION

THIS CAUSE, which came to be heard this 9th day of October, 1987, and which has been regularly docketed, matured and set for hearing; upon plaintiff's Motion for Equitable Distribution of the Marital property of the parties, and for an award of her attorney fees incurred in this cause; upon proper, timely, and legal notice to the defendant and his counsel of record of the hearing this day, neither of whom appeared; upon the presentation of evidence to the Court ore

tenus; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court finds from the evidence the following facts: that the parties have or had marital assets totalling $69,500.00 which are subject to equitable distribution; that the plaintiff and defendant are entitled to a lump sum award by the Court pursuant to Section 20-107.3 of the Code of Virginia, 1950, as amended; and accordingly, it is therefore

ADJUDGED, ORDERED and DECREED that pursuant to the provisions and considerations of Section 20-107.3 of the Code of Virginia, 1950, as amended, the parties have or had marital assets totalling $69,500.00, which are subject to equitable distribution; that the

plaintiff, JOAN H. DEAN, is hereby awarded Seventy (70%) percent of the marital assets of the parties, specifically totalling $48,650.00; and the defendant, JAMES E. DEAN, is awarded Thirty (30%) percent of the marital assets, specifically totalling $20,850.00; and it is further

ADJUDGED, ORDERED and DECREED that the defendant shall pay to the plaintiff the additional sum of $3,000.00 for her attorney fees, expenses, and costs incurred in this cause; and it is further

ORDERED that this cause shall be retained on the docket of the Court for such further orders and proceedings as may be necessary, including but not limited to the partition of property, with a copy of the Order being sent to

Counsel of record by the Clerk of this Court.

Enter: 11/2/87
NUNC PRO TUNC as of 10/9/87

John F. Daffron, Jr.
Judge
Date: October 22, 1987.

I ASK FOR THIS:

WILLIAM D. HAMNER, p.q.

SEEN AND OBJECTED TO:

_____, p.d.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

JOAN H. DEAN, Plaintiff,

v. Chancery No. 5117-86

JAMES E. DEAN, Defendant.

FINAL DECREE

THIS CAUSE, which came to be heard this 28th day of September, 1987, and which has been regularly docketed, matured and set for hearing; upon plaintiff's Bill of Complaint and exhibits filed herewith; upon proof of proper and legal service of process upon the defendant; upon the answer and cross-bill of the defendant; upon the plaintiff's answer to defendant's cross-bill; upon the depositions of witnesses taken on behalf of the plaintiff,

regularly taken after proper and legal notice and filed in accordance with law; upon proper, timely and legal notice to the defendant and his counsel of record of the hearing this day, neither of whom appeared; and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court finds from the evidence, independently of any admissions of the parties in the pleadings or otherwise, the following facts: that the parties are sui juris, being over the age of eighteen years; that the parties were lawfully married on June 23, 1979, in the City of Plainfield, State of New Jersey; that there were two (2) children born of this marriage, namely JAYNE ELIZABETH DEAN, born February 12, 1981, age 6 and JONATHON EDWARD DEAN, born January 18,

1984, age 3; that both plaintiff and defendant were bona fide residents of and have been domiciled in the Commonwealth of Virginia for more than six (6) months prior to the commencement of this proceeding; that plaintiff is now a bona fide resident of the Commonwealth of Virginia and the defendant is now believed to be a resident of the State of Florida; that neither is a member of the Armed Forces of the United States; and that the plaintiff and defendant last cohabitated as Husband and Wife in the County of Chesterfield, Virginia; that the parties were both residents of the County of Chesterfield, Virginia, at the time of the commencement of this suit; that the parties have lived separate and apart without any cohabitation and

without interruption for more than one (1) year; and that the defendant has failed and refused to pay child and spousal support, medical bills, and attorney fees as previously ordered by this Court, thereby being in substantial arrears; that the defendant has been found by the Court as of July 21, 1987 to be in contempt of this Court's orders and a capias has been ordered to be issued for the defendant's arrest; and that the only marital property of the parties presently existing in the Commonwealth of Virginia is the marital residence and its contents, presently occupied by the plaintiff and the said minor children, the defendant having previously removed from the residence and the Commonwealth of Virginia his personal effects, other

personal marital property, and other marital assets.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the plaintiff, JOAN H. DEAN, is now absolutely divorced form (sic) the defendant, JAMES E. DEAN, from the bond of matrimony on the ground that the parties have lived separate and apart without any cohabitation and without interruption for more than one (1) year, and that the bond of matrimony created by the marriage between these parties of June 23, 1979, is dissolved; and it is further

ADJUDGED, ORDERED and DECREED that the Court doth affirm, ratify and incorporate into this Decree, the said prior Orders of this Court entered 3/26/87, 4/15/87, 5/18/87, 6/3/87, and

7/21/87, to the extent they are not modified by this Order; and it is further

ADJUDGED, ORDERED and DECREED that the Court does hereby specifically ratify and incorporate this Court's rulings of July 21, 1987, in which it appeared to the Court, upon the representations of plaintiff and her counsel, that the defendant's counsel had been timely and properly notified of said hearing, and that defendant's counsel had advised plaintiff's counsel that he would not be appearing, nor would the defendant; that the defendant had paid the plaintiff the sum of $1,100.00 on or about Juen 4, 1987, and the sum of $500.00 on or about July 15, 1987, thereby reducing his arrearage to $4,332.33, as of 7/21/87, including medicals property provided to

the defendant; and that the plaintiff was deserving of an award of attorney fees; and Accordingly it was, and is

ADJUDGED, ORDERED and DECREED, that the defendant, JAMES E. DEAN, be and hereby is found in contempt of this Court's orders, and that the Clerk of this Court issue a capias for his arrest and that the said defendant be taken into custody and brought before this Court, to be punished accordingly; that the defendant pay to the plaintiff the additional sum of $1,000.00, immediately, for plaintiff's attorney fees incurred herein; and that the defendant properly respond to plaintiff's Interrogatories and Motion for Production of Documents by immediately responding and providing proper documentation concerning his

employment, income, medical insurance, and bank checking and/or savings accounts, including but not limited to copies of bank statements and employer payroll records; and it is further

ADJUDGED, ORDERED and DECREED that the sole custody of both the said minor children born of this marriage be, and it is hereby awarded to the plaintiff, JOAN H. DEAN; and it is further

ADJUDGED, ORDERED and DECREED that the defendant shall pay to the plaintiff the sum of Five Hundred Dollars ($500.00) per month, beginning October 1, 1987, representing money for the support and maintenance of the plaintiff, to be paid on the first day of each month, and every month continuously thereafter until such time as the plaintiff dies or remarries;

and it is further

ADJUDGED, ORDERED and DECREED that pursuant to Section 20-60.3 of the Code of Virginia, 1950, as amended, the defendant, JAMES E. DEAN, social security number 287-48-2903, shall pay to the plaintiff, JOAN H. DEAN, the sum of Nine Hundred Dollars ($900.00) per month, being Four Hundred Fifty Dollars ($450.00) per child, beginning October 1, 1987, to be paid on the first day of each month, and every month continuously thereafter until such time as the children attain the age of eighteen (18), for the support and maintenance of the said minor children; that the defendant shall provide medical and health insurance coverage for the said minor children, and defendant shall pay any and

all medical, health, mental, and dental bills for said children not paid for by medical insurance; that there is presently a support arrearage due from the defendant to plaintiff of Six Thousand One Hundred Thirty-two and 33/100 Dollars ($6,132.33), plus additional unpaid medical bills, and unpaid ordered attorney fees of $1,210.00; and further, defendant shall take notice that support payments in arrears may be withheld pursuant to Section 29-79.1 of the Code of Virginia, without further order of any Court or having to file an application for services with the Department of Social Services; and it is further

ADJUDGED, ORDERED and DECREED that JUDGMENT is hereby entered in favor of

the plaintiff, JOAN H. DEAN, against the defendant JAMES E. DEAN, in the amount of $7,342.33, for support, medical bill (sic), and attorney fees arrearages, plus interest at the rate of eight (8.0%) percent per annum, and all costs incurred in this proceeding, until said Judgement principal and interest are paid in full; and it is further

ORDERED that the issue of additional attorney fees incurred in this cause be deferred.

And this cause is ordered to be retained on the docket for such further orders and proceedings as may be necessary to equitably divide the marital property of the parties, and that a copy of this Order be sent to counsel of record by the Clerk.

John F. Daffron, Jr., Judge
Dated: 9/28/87

I ASK FOR THIS:
William D. Hamner, p.q.

_____, p.d.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF CHESTERFIELD

JOAN H. DEAN, Plaintiff,

v. Chancery No. 5117-86

JAMES E. DEAN, Defendant.

ORDER

THIS 21st day of July, 1987, came the Plaintiff, by counsel, upon Plaintiff's Motion to find the Defendant in contempt for his failure to pay support and medical bills totalling $4,357.00, as previously ordered by this Court on March 26, 1987, and for his failure to properly answer Plaintiff's Interrogatories and Motion for Production of Documents, as previously ordered by this Court on April 15, 1987; and upon the appearance of the plaintiff and her

counsel; upon proper, timely and legal notice to the Defendant and his counsel of record, neither of whom apepared; and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court, upon the representations of Plaintiff and her counsel, that the Defendant's counsel had been timely and properly notified of this hearing, and that Defendant's counsel had advised Plaintiff's counsel that he would not be appearing, nor would the Defendant; that the Defendant has paid the Plaintiff the sum of $1,100.00 on or about June 4, 1987, and the sum of $500.00 on or about July 15, 1987, thereby reducing his present arrearage to $4,332.33, including medicals properly provided to the Defendant; and that the

Plaintiff is deserving of an award of attorney fees; Accordingly, it is

ADJUDGED, ORDERED and DECREED, that the Defendant, James E. Dean, by and hereby is found in contempt of this Court's orders, and that the Clerk of this Court issue a capias for his arrest and that the said Defendant be taken into custody and brought before this Court, to be punished accordingly; that the Defendant pay to the Plaintiff the additional sum of $1,000.00, immediately, for Plaintiff's attorney fees incurred herein; and that the Defendant properly respond to Plaintiff's Interrogatories and Motion for Production of Documents by immediately responding and providing proper documentation concerning his employment, income, medical insurance,

and bank checking and/or savings accounts, including but not limited to copies of bank statements and employer payroll records.

And this cause is Ordered to be retained on the docket of the Court for such further orders and proceedings as may be necessary, with the Clerk ordered to forward a copy of this Order to counsel for the parties herein.

Date: 8/17/87 NUNC PRO TUNC as of 9/21/81

John F. Daffron, Jr., Judge

I ASK FOR THIS:

William D. Hamner, p.q.

SEEN AND OBJECTED TO:

Joseph W. Kaestner, p.d.

§ 20-108. **Revision and alteration of such decrees.** The Court may, from time to time after decreeing as provided in § 20-107.2 on petition of either of the parents, or on its own motion or upon petition of any probation officer or superintendent of public welfare, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given to the responding party. (Code 1919, § 5111; 1926, p. 105; 1927, p. 184; 1934, p. 515; 1938, p. 784; 1944, p. 397; 1948, p. 593; 1986, c. 537; 1987, c. 649.)

§ 20-109. **Changing maintenance and support for a spouse; effect of stipulations as to maintenance and support for a spouse; cessation upon remarriage or death.** Upon petition of either party the court may increase, decrease, or terminate spousal support and maintenance that may tehreafter accrue, whether previously or hereafter awarded, as the circumstances may make proper. However, if a stipulation or contract signed by the party to whom such

relief might otherwise be awarded is filed before entry of a final decree, no decree or order directing the payment of support and maintenance for the spouse, suit money, or counsel fee or establishing or imposing any other condition or consideration, monetary or nonmonetary, shall be entered except in accordance with that stipulation or contract. If such a stipuation or contract is filed after entry of a final decree and if any party so moves, the court shall modify its decree to conform to such stipulation or contract. (Code 1919 § 5111; 1934, p. 516; 1938, p. 784; 1944, p. 397; 1948, p. 593; 1972, c. 482; 1975, c. 644; 1977, c. 222; 1978, c. 746; 1987, c. 694.)